

OCT 3 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS VINCENT REES,

Defendant - Appellant.

No. 10-10364

D.C. No. 3:09-cr-00102-RCJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, Chief Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Thomas Vincent Rees appeals from the 60-month sentence imposed following his guilty-plea conviction for possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rees contends that the district court erred by denying his motion for a continuance of the sentencing hearing. Though he pleaded guilty pursuant to a plea agreement in which he waived his right to appeal any aspect of his sentence, Rees contends that the waiver is inapplicable because the district court's denial of a continuance prevented it from considering, or having an adequate opportunity to consider, all of the evidence he submitted in favor of a lower sentence. The record reflects that the district court considered all of the evidence Rees submitted during sentencing. Rees' appeal is thus barred by a valid appeal waiver. *See United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007) (A valid appeal waiver will not apply if the sentence does not comport with the terms of the plea agreement or violates the law).

AFFIRMED.